

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Carrier Branch**

**RESOLUTION T-16792
December 4, 2003**

RESOLUTION

Resolution T-16792. Kerman Telephone Company (U-1012). Request Authority to Establish a New Promotional Campaigns Schedule (Schedule A-6) to Its Tariff Reflecting the Offering of New or Optional Services During Promotional Periods with Waived or Discounted Tariffed Non-Recurring Charges.

By Advice Letter No. 323, Filed on October 10, 2003. Supplemented by Advice Letter Nos. 323A, 323B, 323C and 323D Filed on October 14, October 16, October 21, and October 30, 2003, Respectively.

Summary

This Resolution approves Kerman Telephone Company's (Kerman) request in Advice Letter (AL) Nos. 323, 323A, 323B, 323C and 323D for authority to establish a New Promotional Campaigns schedule (Schedule A-6) to its tariff reflecting the offering of new or optional services during promotional periods with waived or discounted tariffed non-recurring charges.

Background

Kerman is currently required to charge its subscribers the full tariffed rates and charges, and is not allowed to offer its subscribers any discount for new or existing optional services.

In AL No. 323, filed October 10, 2003, Kerman requests authority to establish a New Promotional Campaigns schedule (Schedule A-6) to its tariff reflecting the offering of new or optional services during promotional periods with waived or discounted tariffed non-recurring charges. Subsequently, Kerman filed four supplements to the Advice Letter: (1) AL No. 323A, to change the effective date of the original AL filing to: "The effective date will be determined in the Resolution;" (2) AL No. 323B, to make modification to its AL to correct "Special Conditions #1" to read: "All services listed in Special Condition 6 are approved by Advice Letter filings and shall become effective on regular notice, which is no less than five days;" (3) 323C to make an addition to its AL to modify the format of and to add to "Special Conditions #8" to read: "8. A post-analysis financial impact report required on each promotional offering should be provided to the Telecommunications Division by the Utility, within 60 days

of the ending date of each promotion and receive Telecommunications Division approval before the next promotional offering is made. This report should include the following information:

- a. The original estimate of revenues and number of customers, as filed with the Advice Letter.
- b. The non-recurring revenue loss from the promotion.
- c. The non-recurring costs of the promotion.
- d. The recurring revenue gain.
- e. The recurring expenses.
- f. The number of subscribing customers.
- g. The record of any complaints.
- h. The record of the service retention by customers during the promotional period,”

and (4) 323D to add paragraph #9 to its “Special Conditions” section. Copies of these advice letters and related tariff sheets are being provided to adjacent and competing utilities in compliance with General Order No. 96-A.

In AL No. 323 as supplemented by 323A, 323B, 323C and 323D, Kerman proposes the following Special Conditions:

1. All services listed in Special Condition 6 are approved by Advice Letter filings and shall become effective on regular notice, which is no less than five days.
2. Promotional campaigns listed in Special Conditions 6 are subject to the Utility’s Rules and offered only where facilities and operating conditions permit.
3. The promotional campaign duration shall not exceed 120 days per offering. All promotional campaigns will be approved by Advice Letter filings, which shall include but not be limited to:
 - Service selection
 - Non-recurring charges
 - Promotional area
 - Duration
 - Customer notification plan

The Utility will notify the California Public Utilities Commission by a five-day memorandum notice of all repeat or extended promotions. The authorization for repeat or extended promotions will be limited to 120 days.

No promotion, whether repeated or extended will last for more than 240 consecutive days: 120 days duration approved through an advice letter filing and an additional 120 days extension of time to either repeat or extended promotions approved via the five-day notice.

The Utility will wait 60 days after a promotion has run for 240 consecutive days before filing to offer the same promotion again.

4. The method of customer notification of the promotional campaign is at the option of the Utility.
5. Customers may cancel the promotional offering at any time during or at the conclusion of the promotional period without penalty. Minimum billing, as set forth in Rule No. 9, Rendering and Payment of Bills, is applicable to a promotional offering.
6. Promotional Campaigns shall be limited to serving central offices designated by the utility and include the following service: (none at this time)
7. During the “subscription” phase of each promotion, the customer will be fully informed of all terms and conditions of the promotional offering, and the Utility will contact the customer regarding the retention or discontinuance of the service prior to the end of the promotional period. This contact will inform the customer that if they wish to retain the promoted service, they need to do nothing; and if they wish to discontinue it, they need to call the Utility’s business office to do so. Samples of the notification materials will be provided to the Telecommunications Division when proposing the promotion.
8. A post-analysis financial impact report required on each promotional offering should be provided to the Telecommunications Division by the Utility, within 60 days of the ending date of each promotion and receive Telecommunications Division approval before the next promotional offering is made. This report should include the following information:
 - a. The original estimate of revenues and number of customers, as filed with the Advice Letter.
 - b. The non-recurring revenue loss from the promotion.
 - c. The non-recurring costs of the promotion.
 - d. The recurring revenue gain.
 - e. The recurring expenses.
 - f. The number of subscribing customers.

- g. The record of any complaints.
 - h. The record of the service retention by customers during the promotional period.
9. The Utility may advertise and market promotional pricing campaigns prior to the effective date of the promotion provided that all media where the promotion is discussed, contain the disclaimer “..this promotion will be effective on (specific date) pending Commission notification.”

Notice/Protests

Kerman states that copies of AL Nos. 323, 323A, 323B, 323C and 323D and related tariff sheets were provided to adjacent and competing utilities. AL No. 323 was filed on October 10, 2003, and appeared in the Commission's Daily Calendar of October 14, 2003. AL No. 323A was filed on October 14, 2003 and appeared in the Commission's Daily Calendar of October 17, 2003. AL No. 323B was filed on October 16, 2003 and appeared in the Commission's Daily Calendar of October 22, 2003. AL No. 323C was filed on October 21, 2003 and appeared in the Commission's Daily Calendar of October 29, 2003. AL No. 323D was filed on October 30, 2003 and appeared in the Commission's Daily Calendar of November 3, 2003. The Telecommunications Division has received no protests to AL Nos. 323, 323A, 323B, 323C, and 323D.

Discussion

A. The Terms of Commission Authorization

Kerman, in AL Nos. 323, 323A, 323B, 323C and 323D requests to establish a permanent new promotional campaign tariff platform reflecting the offering of new or optional services during promotional periods with waived or discounted tariffed non-recurring charges. Similar authority has been granted to GTE West Coast Incorporated in Resolution T-16171, dated September 17, 1998; The Ponderosa Telephone Company in Resolution T-16142, dated May 7, 1998; Sierra Telephone Company in Resolution T-16091, dated December 3, 1997; and Evans Telephone Co. in Resolution T-16081, dated September 3, 1997. When a permanent promotional tariff is authorized, promotional offerings, which meet the terms and conditions of that authorization, may be filed by advice letter, which would go into effect on not less than five days notice without a Commission resolution.

In AL Nos. 323, 323A, 323B, 323C and 323D, Kerman does not seek to waive or discount recurring charges for its new or existing services. As for waiving recurring charges, we have approved this practice only for telephone companies that have received flexible pricing authority under the Commission's New Regulatory Framework (NRF).

B. Definition of Legitimate Services/Offerings

Public Utilities (P.U.) Code Section 453-C states: “No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.” In order to satisfy this statute, promotional offerings should be made available to all customers using equivalent services and facilities, regardless of class or locale. Therefore, promotional offerings (reduced or waived non-recurring tariff charges) are appropriate when offered to all customers or when a service is newly available, either throughout the utility’s intrastate service territory or due to the upgrade of the utility’s serving facilities.

Additionally, in considering whether a “service” is appropriate for promotion, we should consider the definition of “new service” which this Commission adopted in Decisions (D.) 87-07-017, D.88-12-091, and D.90-11-029. In these decisions, we have agreed with AT&T’s definition of new service as “an offering which customers perceive as a new service and which has a combination of technology, access, features or functions that distinguishes it from any existing services”. (D.88-12-091 at p.53) The Commission adopted this definition with the qualifier that “repricing or repackaging of an existing service would not be considered a new service” and observed, “the definition does not classify an optional calling plan which discounts existing service as a new service.” (Id. at pp. 53-54)

C. Conclusion

Authorizing Kerman a permanent promotional tariff for new and existing optional services will allow its customers the benefit of making an informed decision based on personal use of the service during the promotional period.

In order to mitigate negative impacts and avoid discriminatory treatment on its subscribers or its general ratepayers, each promotion-specific advice letter by Kerman should meet the Special Conditions identified in AL Nos. 323, 323A, 323B, 323C and 323D and also include the following information:

1. The overall criteria for waiving or discounting the non-recurring charges during the promotional program and the financial impacts on the entire service to reflect the revenue required to recover the cost of the promotion.
2. The start and end dates of the promotion(s).
3. The program for customer notification/participation.
4. Samples of the notification materials.

5. Any limitations or safeguards (e.g., customer selection, rate structure, and program monitoring).
6. The tracking (post-implementation analysis) plan.

In addition, Kerman should provide Telecommunications Division with a financial impact report within 60 days of the ending date of each promotional offering and receive Telecommunications Division approval before the next promotional offering commences. This report should separately specify the following information:

1. The original estimate of revenues and number of customers, as filed with the AL.
2. The non-recurring revenue loss from the promotion.
3. The non-recurring costs of the promotion.
4. The recurring revenue gain.
5. The recurring expenses.
6. The number of subscribing customers.
7. The record of any complaints.
8. The record of the service retention by customers during the promotional period.

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings

1. Kerman's request for permanent status to offer promotional pricing programs in AL Nos. 323, 323A, 323B, 323C and 323D is generic in nature. These filings are designed to provide the foundation for future promotional offerings of optional services, which result from new utility serving facility technology or territory-wide offerings of new or existing optional services.
2. Once the Commission authorizes and adopts a promotional program by resolution (i.e., via AL Nos. 323, 323A, 323B, 323C and 323D), no further Commission resolutions should be required for promotional offerings, which meet the terms and conditions of that authorization. Such subsequent filings can be made by advice letters, which will go into effect on regular notice, which is no less than five days without a Commission resolution. These advice letters are subject to a 20-day protest period.
3. Kerman is not a NRF telephone company, its request to waive or discount non-recurring charges only for service and feature introductions as a result of the new

or upgraded central office capability and for offerings of new or existing optional service during a promotion is reasonable.

4. In order to satisfy P.U. Code Section 453(c), promotional offerings should be made available to all customers using equivalent services and facilities (i.e., the same or similarly equipped central offices), regardless of class or locale.
5. Promotional offerings (reduced or waived non-recurring charges) are appropriate when offered to all customers or when a service is newly available (but has passed the market trial and technology test stages) either throughout the utility's intrastate service territory or due to the upgrade of the utility's serving facilities.
6. In considering whether a "service" is appropriate for promotion, the definition used and adopted in D.87-07-017, D.88-12-091, and D.90-11-029 is to be utilized by Kerman.
7. We adopted this definition with the qualifier that "repricing or repackaging of an existing service would not be considered a "new service" and observed, "the definition does not classify an optional calling plan which discounts existing service as a "new service". (Id. at pp. 53-54)
8. Authorizing the promotional pricing of optional services will afford Kerman's customers the benefit of "trialing" the service and then to make an informed decision whether to continue the service on a permanent basis.
9. Each promotion-specific advice letter should include the following information:
 - a. The overall criteria for waiving or discounting the non-recurring charges during the promotional program and the financial impacts on the entire service to reflect the revenue required to recover the cost of the promotion.
 - b. The start and end dates of the promotion(s).
 - c. The program for customer notification/participation.
 - d. Samples of the notification materials.
 - e. Any limitations or safeguards (e.g., customer selection, rate structure, and program monitoring).
 - f. The tracking (Post-implementation analysis) plan.
10. Advice letters, which comply with the conditions enumerated in the Findings in this resolution, should become effective on regular notice, which is no less than five days.

11. The Special Conditions set forth in AL Nos. 323, 323A, 323B, 323C and 323D, shall be adhered to by Kerman once this Resolution is approved.
12. The financial impact report required on each promotional offering should be provided to Telecommunications Division within 60 days of the ending date of each promotion and receive Telecommunications Division approval before the next promotional offering is made. This report should include the following information:
 - a. The original estimate of revenues and number of customers, as filed with the AL.
 - b. The non-recurring revenue loss from the promotion.
 - c. The non-recurring costs of the promotion.
 - d. The recurring revenue gain.
 - e. The recurring expenses.
 - f. The number of subscribing customers.
 - g. The record of any complaints.
 - h. The record of the service retention by customers during the promotional period.

THEREFORE, IT IS ORDERED that:

1. Kerman's request in its AL Nos. 323, 323A, 323B, 323C and 323D, for authority to establish a new Promotional Campaigns schedule (Schedule A-6) to its tariff reflecting the offering of new or optional services during promotional periods with waived or discounted tariffed non-recurring charges only, is authorized.
2. Kerman shall file advice letters for inclusion of specific optional services in its Promotional Campaigns schedule (Schedule A-6) of its tariff to become eligible for promotional pricing. Such advice letters shall include the elements specified in Finding 9.
3. Financial Impact Report(s) shall be filed by Kerman within 60 days of the ending date of each promotional offering and shall include the details set forth in Finding 12. The Telecommunications Division shall approve the report on the last promotional offering before the next promotional offering is made.
4. The Special Conditions must be reflected in Kerman's first promotional offering by filing an advice letter on five-days notice with the Commission.

This Resolution is effective today:

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 4, 2003. The following Commissioners approved it:

WILLIAM AHERN
Executive Director

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Commissioner Loretta M. Lynch, being
necessarily absent, did not participate.